

1
2 **BERNALILLO COUNTY, NEW MEXICO**

3
4 **ORDINANCE NO. 2017-___**

5
6 AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF AN
7 INDUSTRIAL REVENUE BOND FOR THE BENEFIT OF VILLAGE @ LA
8 ORILLA, LLC (THE "COMPANY") TO BE ENTITLED BERNALILLO
9 COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND
10 (VILLAGE @ LA ORILLA PROJECT), SERIES 2017 (THE "BOND"), IN A
11 PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION DOLLARS
12 (\$4,000,000); PROVIDING THAT THE BOND WILL BE ISSUED FOR THE
13 PURPOSE OF INDUCING VILLAGE @ LA ORILLA, LLC. TO ACQUIRE,
14 IMPROVE AND EQUIP A MULTI-PURPOSE RESTAURANT, RETAIL,
15 MANUFACTURING AND ENTERTAINMENT FACILITY, ALL WITHIN
16 THE COUNTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF
17 AND INTEREST ON THE BOND FROM LEASE PAYMENTS TO BE PAID
18 BY THE COMPANY TO THE COUNTY; PROVIDING FOR THE
19 EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT,
20 AND BOND PURCHASE AGREEMENT.
21

22 **WHEREAS**, Bernalillo County, New Mexico (the "County") is a legally and regularly
23 created, established, organized and existing county under the general laws of the State of New
24 Mexico; and

25 **WHEREAS**, the County is authorized by Sections 4-59-1 to 4-59-16, inclusive, NMSA
26 1978, as amended (the "Act"), to acquire industrial revenue projects to be located within the
27 County; and is authorized to adopt ordinances to provide for the safety, preserve the health,
28 promote the prosperity and improve the morals, order, comfort and convenience of the County
29 and its inhabitants; and

30 **WHEREAS**, Village @ La Orilla, LLC (the "Company") has presented to the Board of
31 County Commissioners (the "Board") of the County a proposal whereby the County will acquire,
32 improve and equip a multi-purpose restaurant, retail, manufacturing and entertainment facility to
33 be located in the County, to be used by the Company to provide food, retail and entertainment
34 services to the general public (the "Project"), which will constitute an industrial development
35 project as defined in the Act and whereby the County will lease the Project to the Company
36 pursuant to a Lease Agreement dated as of July 1, 2017 (the "Lease Agreement") between the
37 County and the Company; and

1 **WHEREAS**, the County has determined that it is in the best interests of the County and its
2 inhabitants to issue its Taxable Industrial Revenue Bond (Village @ La Orilla Project), Series
3 2017 in the aggregate principal amount not to exceed \$4,000,000 (the “Bond”) to provide funds
4 necessary to acquire, improve and equip the Project, including without limitation, reimbursing
5 the Company for any costs incurred by the Company and to pay the costs of issuance of the
6 Bond; and

7 **WHEREAS**, the County has determined that it is in the best interest of the County to
8 provide for the reimbursement to the Company from Bond proceeds of certain costs incurred
9 with respect to the Project prior to the adoption of this Ordinance; and

10 **WHEREAS**, the Bond will be issued by the County pursuant to the Act and in accordance
11 with the terms of an Indenture (the “Indenture”) dated as of July 1, 2017 by and among the
12 County, the Company, BOKF, N.A., as Depositary, and the purchaser of the Bond (the
13 “Purchaser”); and

14 **WHEREAS**, the Purchaser will purchase the Bond at the purchase price set forth in the
15 Bond Purchase Agreement dated as of July 1, 2017 (the “Bond Purchase Agreement”) among the
16 County, the Company and the Purchaser; and

17 **WHEREAS**, the County is not pledging its faith and credit to the payment of the principal
18 of or the interest on the Bond; and

19 **WHEREAS**, all required authorizations, consents or approvals of any state, governmental
20 body, agency or authority in connection with the authorization, execution and delivery of the
21 Bond which are required to have been obtained by the date hereof have been obtained, and which
22 will be required to be obtained prior to the date of the issuance of the Bond will have been
23 obtained by such date; and

24 **WHEREAS**, the following documents have been prepared in connection with the issuance
25 of the Bond and have been reviewed by the County’s Bond Counsel and are on file with the
26 County Clerk:

- 27 (a) the Indenture;
- 28 (b) the Lease Agreement;
- 29 (c) the Bond Purchase Agreement; and
- 30 (d) Notice of Intent to Adopt an Ordinance, published November 19, 2016;

1 (e) Revised Notice of Intent to Adopt an Ordinance, published April 29, 2017;
2 and

3 **WHEREAS**, the Notice of Intent to Adopt an Ordinance referred to above was duly
4 published in accordance with Section 4-37-7, NMSA 1978, as amended, which publication is
5 deemed to comply with the procedures and policies of the County with respect to such
6 publications; and

7 **WHEREAS**, there is on deposit with the County Clerk the proposed form of this
8 Ordinance.

9 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**
10 **BERNALILLO COUNTY, NEW MEXICO:**

11 **SECTION 1.** *Approval of Indenture.* The Indenture, substantially in the form presented
12 herewith, with such changes, insertions, deletions and modifications as may be approved by the
13 Chair or Vice Chair of the Board and as may be recommended by Bond Counsel, is hereby
14 ratified and approved. All such changes, insertions, deletions and modifications shall be deemed
15 to have been approved by the County upon execution and delivery of the Indenture, such
16 execution and delivery to be conclusive evidence of such approval. The Chair or Vice Chair of
17 the Board is hereby authorized and directed to execute and deliver the Indenture on behalf of the
18 County.

19 **SECTION 2.** *Approval of Lease Agreement.* The Lease Agreement, substantially in
20 the form presented herewith, with such changes, insertions, deletions and modifications as may
21 be approved by the Chair or Vice Chair of the Board and as may be recommended by Bond
22 Counsel, is hereby ratified and approved. All such changes, insertions, deletions and
23 modifications shall be deemed to have been approved by the County upon execution and delivery
24 of the Lease Agreement, such execution and delivery to be conclusive evidence of such approval.
25 The Chair or the Vice Chair of the Board is hereby authorized and directed to execute and
26 deliver the Lease Agreement on behalf of the County. The Board hereby finds that the Lease
27 Agreement requires the Company to maintain the Project in good repair and condition (excepting
28 reasonable wear and tear) and carry proper insurance with respect to the Project. The Board
29 hereby finds that the Lease Agreement requires the Company to make payments sufficient to pay
30 the principal of, redemption premium, if any, and interest on the Bond as such principal,
31 redemption premium and interest become due. The Board hereby finds that it is not necessary or

1 advisable to establish any reserve funds in connection with the retirement of the Bond or the
2 maintenance of the Project.

3 **SECTION 3. *Authorization of the Bond.*** The Board hereby authorizes and approves
4 the issuance of the Bond for the purposes of acquiring, improving and equipping the Project,
5 including without limitation, reimbursing the Company for any costs incurred by the Company
6 for the Project, and paying the costs of issuance of the Bond including, but not limited to, the
7 reimbursement of certain costs incurred by the Company prior to the adoption of this Ordinance.
8 The Bond shall be issued under the terms and conditions of the Indenture, including provisions
9 for the payment of principal of and interest on the Bond. The Bond shall be signed by or bear
10 the facsimile signature of the Chair of the Board, or the Vice Chair acting in her absence, and the
11 County Clerk or a deputy County Clerk acting in her absence.

12 **SECTION 4. *Approval of the Bond Purchase Agreement.*** The Bond Purchase
13 Agreement, substantially in the form presented herewith, with such changes, insertions, deletions
14 and modifications as may be approved by the Chair or Vice Chair of the Board and as may be
15 recommended by Bond Counsel, is hereby ratified and approved. All such changes, insertions,
16 deletions and modifications shall be deemed to have been approved by the County upon
17 execution and delivery of the Bond Purchase Agreement, such execution and delivery to be
18 conclusive evidence of such approval. The Chair or Vice Chair of the Board is hereby
19 authorized and directed to execute and deliver the Bond Purchase Agreement on behalf of the
20 County.

21 **SECTION 5. *General Authorization.*** The Board hereby authorizes, empowers and
22 directs each of the officers (including the Board officers) and employees of the County, and its
23 counsel, to execute, carry out or cause to be carried out, and to perform, such obligations of the
24 County and such other actions as they, in consultation with Bond Counsel and advisors to the
25 County in connection with the issuance, sale and delivery by the County of the Bond, shall
26 consider necessary or advisable in connection with this Ordinance, including but not limited to
27 the obligations of the County contained in the Indenture, the Lease Agreement, the Bond
28 Purchase Agreement and such other documents and any amendments, from time to time, thereto,
29 deemed necessary, and for the issuance, sale and delivery of the Bond.

30 **SECTION 6. *Severability.*** If any one or more provisions of this Ordinance should be
31 determined by a court of competent jurisdiction to be contrary to law, any such provision shall be

1 deemed separable from the remaining provisions hereof and the invalidity or unenforceability
2 thereof shall in no way affect the validity or the enforceability of the other provisions of this
3 Ordinance.

4 **SECTION 7. *No Recourse and Liability.*** All covenants, stipulations, obligations and
5 agreements of the County contained in this Ordinance, and in the documents hereby approved
6 and authorized for execution shall be deemed to be the covenants, stipulations, obligations and
7 agreements of the County, and all such covenants, stipulations, obligations and agreements shall
8 be binding upon the County, and, except as otherwise provided in this Ordinance and such
9 documents, all rights, powers and privileges conferred, and duties and liabilities imposed, upon
10 the County by the provisions of this Ordinance, and in the documents hereby approved and
11 authorized for execution, shall be exercised or performed by the Board; provided that no
12 covenant, stipulation, obligation or agreement herein contained or contained in any document
13 hereby approved and authorized for execution shall be deemed to be a covenant, stipulation,
14 obligation or agreement of any officer, director, member, or employee of the County in his or her
15 individual capacity, and neither the members of the Board nor any officials executing the Bond
16 shall be liable personally on the Bond or be subject to any personal liability or accountability by
17 reason of the issuance thereof.

18 **SECTION 8. *Ordinance Irrepealable.*** After the Bond is issued, this Ordinance shall
19 be and remain irrepealable until the Bond and the interest thereon shall be fully paid, canceled
20 and discharged, as provided in the Indenture, or there has been a defeasance as provided in the
21 Indenture.

22 **SECTION 9. *Repealer Clause.*** All bylaws, orders, resolutions and ordinances, or
23 parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency.
24 This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part
25 thereof, heretofore repealed.

26 **SECTION 10. *Effective Date.*** Upon due adoption of this Ordinance, it shall be
27 recorded in the book of ordinances of the County kept for that purpose, and this Ordinance shall
28 be in full force and effect 30 days thereafter, in accordance with law.

29 **SECTION 11. *Bond Delivery Date.*** The Bond shall be delivered no later than 90 days
30 from the effective date of adoption of this Ordinance.

1 **SECTION 12.** *General Summary for Publication.* Pursuant to the general laws of the
2 State, the title and a general summary of the subject matter contained in this Ordinance shall be
3 published in substantially the following form:
4

(Form of Summary of Ordinance for Publication)

BERNALILLO COUNTY, NEW MEXICO

NOTICE OF ADOPTION OF ORDINANCE NO. 2017-____

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter of an ordinance, duly adopted and approved by the Board of County Commissioners of Bernalillo County, New Mexico (the "County") on May 23, 2017.

Ordinance No. 2017-____:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF INDUSTRIAL REVENUE BOND FOR THE BENEFIT OF VILLAGE @ LA ORILLA, LLC (THE "COMPANY") TO BE ENTITLED BERNALILLO COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (VILLAGE @ LA ORILLA PROJECT), SERIES 2017 (THE "BOND"), IN A PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION DOLLARS (\$4,000,000); PROVIDING THAT THE BOND WILL BE ISSUED FOR THE PURPOSE OF INDUCING VILLAGE @ LA ORILLA, LLC TO ACQUIRE, IMPROVE AND EQUIP A MULTI-PURPOSE RESTAURANT, RETAIL, MANUFACTURING AND ENTERTAINMENT FACILITY, ALL WITHIN THE COUNTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND FROM LEASE PAYMENTS TO BE PAID BY THE COMPANY TO THE COUNTY; PROVIDING FOR THE EXECUTION AND DELIVERY OF AN INDENTURE LEASE AGREEMENT, AND BOND PURCHASE AGREEMENT.

The following is a general summary of the subject matter contained in Ordinance No. 2017-____:

Preamble recites such matters as the existence of the County; the authority of the County to issue bonds under New Mexico law; the determination of the County to issue its Bernalillo County, New Mexico Taxable Industrial Revenue Bond (Village @ La Orilla Project), Series 2017 in the aggregate principal amount not to exceed \$4,000,000 (the "Bond") for the purpose of leasing the project to Village @ La Orilla, LLC, a New Mexico limited liability company (the "Company"), to provide funds for the purpose of acquiring, improving and equipping a multi-purpose restaurant, retail, manufacturing and entertainment facility, including without limitation, reimbursing the Company for any costs incurred by the Company (the "Project"), and to pay the costs of issuance of the Bond; the sale of the Bond to the purchaser thereof (the "Purchaser"),

1 and at the price to be set forth in the Bond Purchase Agreement; recites that the County is not
2 pledging its faith and credit to the payment of the principal of or interest on the Bond; recites that
3 all required governmental authorizations or approvals have been obtained or will be obtained by
4 the date of issuance of the Bond; recites that project documents have been reviewed by Bond
5 Counsel; and recites that the form of Ordinance is on deposit with the County Clerk.

6 **SECTION 1** approves the Indenture.

7 **SECTION 2** approves the Lease Agreement.

8 **SECTION 3** authorizes the issuance of the Bond.

9 **SECTION 4** approves the Bond Purchase Agreement.

10 **SECTION 5** is the General Authorization provision which directs the officers of the Board
11 and employees of the County to execute all required documents.

12 **SECTION 6** is the severability clause.

13 **SECTION 7** provides that no individual member of the Board or employee of the County
14 shall be personally liable on the Bond.

15 **SECTION 8** provides that the Ordinance is not repealable by the County so long as the
16 Bond is outstanding.

17 **SECTION 9** provides that all inconsistent resolutions and ordinances are repealed.

18 **SECTION 10** provides that the Ordinance shall be in full force and effect thirty days after
19 recordation.

20 **Section 11** provides that the Bond shall be issued no later than 90 days from the adoption
21 of the Ordinance.

22 **SECTION 12** provides for a summary of the Ordinance to be published.

23 COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE COUNTY
24 CLERK, ONE CIVIC PLAZA, 6TH FLOOR, ALBUQUERQUE, NEW MEXICO, 87102, AND ARE
25 AVAILABLE FOR INSPECTION OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE ALSO
26 CONSTITUTES COMPLIANCE WITH SECTIONS 6-14-4 THROUGH 6-14-7, NMSA 1978.

2 (SEAL)

/s/ Linda Stover
County Clerk

(End of Form of Ordinance for Publication)

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PASSED, APPROVED, ADOPTED AND SIGNED this 23rd day of May, 2017.

**BERNALILLO COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS**

Debbie O'Malley, Chair

Steven Michael Quezada, Vice Chair

Wayne Johnson, Member

Maggie Hart Stebbins, Member

Lonnie Talbert, Member

[SEAL]

ATTEST:

Linda Stover, County Clerk

Approved as to Form

Sherman & Howard L.L.C., Bond Counsel